

IN THE IOWA DISTRICT COURT FOR JOHNSON COUNTY

STATE ex rel. GARY DICKEY, Petitioner, v. HON. JASON BESLER, Defendant.	Case No. CVCV080344 RESISTANCE TO APPLICATION FOR LEAVE TO BRING QUO WARRANTO ACTION
---	---

COME NOW the undersigned, on behalf of District Court Judge Jason D. Besler, and resist Mr. Dickey's Application to file a quo warranto action for the reasons set forth below.

FACTUAL BACKGROUND

On April 20, 2018, Iowa's Sixth Judicial District posted a notice of vacancy for a district court judge position. Ex A. Fifteen candidates applied, including Jason Besler, the defendant in this action. Ex. B. In accordance with article V, section 15 of the Iowa Constitution and Iowa Code § 46.14, the district nominating commission considered the applications and interviewed the candidates on May 21, 2018. Ex. B. The nominating commission submitted two nominees to Governor Reynolds for consideration, one of which was Judge Besler. Ex.C. The Governor's office received the names via electronic mail on May 22, 2018. Ex. C.

The Governor and senior members of her staff interviewed the two nominees on June 11, 2018. Affidavit of R. Koopmans, Ex. D. On Thursday, June 21, the Governor's Chief of Staff, Ryan Koopmans, spoke with Governor Reynolds about the Sixth Judicial District vacancy. Governor Reynolds confirmed that she had made a final decision to appoint Mr. Besler. Affidavit of R. Koopmans, Ex. D. Governor Reynolds notified Judge Besler of the appointment

in a phone call on Monday, June 25. Ex. D. Judge Besler signed his oath of office on June 28. Ex. E.

Beginning on June 25 and over the next two weeks, Mr. Koopmans exchanged communications with Molly Kottmeyer, Counsel to Chief Justice Cady, about the appointment. Ex. D. On July 6, 2018, Ms. Kottmeyer sent a formal letter to Mr. Koopmans regarding the appointment process for the sixth judicial district. Ex. F. Ms. Kottmeyer observed, “In practice, the chief justice has always considered a judicial appointment was made when it was communicated to the nominee. This communication from the governor to the nominee is a time-honored practice that every judge in this state has experienced, and an honor that no judge has ever forgotten.” Ms. Kottmeyer’s letter continued, “Nevertheless, this long-standing practice does not mean judicial appointments cannot be made in other ways.” The letter concluded: “the chief justice respectfully defers to and accepts the decision by Governor Reynolds that this appointment was made on June 21.” Ex. F. Judge Besler began working in the sixth judicial district on July 16, 2018 and was assigned his first docket on July 30, 2018, following a two-week training period.

ARGUMENT

1. The application should be denied because Petitioner does not have standing to bring a quo warranto action on behalf of the state.

A relator seeking to bring a quo warranto action in the name of the state must have an interest in the controversy. *State ex rel. Independent School Dist. of Olin v. Hall*, 181 N.W. 633 (Iowa 1921). To establish standing under Iowa law, a plaintiff must “(1) have a specific personal or legal interest in the litigation, and (2) be injuriously affected.” *Godfrey v. State*, 752 N.W.2d 413, 418 (Iowa 2008) (internal citations and quotations omitted). These elements are two separate requirements. *Id.* To satisfy the first requirement, a plaintiff must have “a special

interest in the challenged action, ‘as distinguished from a general interest.’” *Id.* at 419 (quoting *City of Des Moines v. PERB*, 275 N.W.2d 753, 759 (Iowa 1979)). The second requirement, that the plaintiff must be injuriously affected, means the plaintiff must be “‘injured in fact.’” *Id.* (quoting *United States v. Students Challenging Regulatory Agency Procedures*, 412 U.S. 669, 689 n. 14 (1973)).

For more than a century, Iowa’s courts have imposed a standing requirement in cases where litigants seek to represent the general public. In 1907, the Iowa Supreme Court considered whether petitioners had standing to challenge a court order finding that the grand and petit juries for the year 1907 had been illegally selected and drawn in Polk County. Although the petitioners were litigants with cases pending in the Polk County district court that year, the Iowa Supreme Court held that they lacked standing, observing, “it is fairly apparent from the pleadings and the record that the plaintiffs are attempting to represent the general public rather than their individual interests, and they have failed to show authority or warrant for so doing.” *Polk County v. Dist. Court of Polk County*, 110 N.W. 1054, 1055 (Iowa 1907). Under more recent case law, litigants seeking to vindicate the public interest through challenges to governmental action must demonstrate that they have a personal interest in the litigation, and they must allege some type of injury different from the population in general. *Godfrey*, 752 N.W.2d at 420. Thus, in *Alons v. Iowa Dist. Court for Woodbury County*, the Iowa Supreme Court held that plaintiffs lacked standing to challenge a district court decree dissolving a civil union, where the plaintiffs were not parties to the district court action they sought to challenge. *Alons*, 698 N.W.2d 858, 869 (Iowa 2005); *but cf. Hurd v. Odgaard*, 297 N.W.2d 355, 358 (Iowa 1980) (holding that the plaintiffs had standing to seek to compel repairs of the county courthouse as citizens and taxpayers of the county).

Here, the only individuals who could plausibly establish that they were injured by Judge Besler's appointment are the Chief Justice and the second nominee, Ellen Ramsey-Kacena. Mr. Dickey has not alleged *any* facts suggesting that he has a specific personal interest in Judge Besler's appointment, or that he has an individualized injury arising from Judge Besler's appointment that is different from the population's interest in general. Because Mr. Dickey has not alleged facts to establish that he has standing to bring this action on behalf of the State, his application for leave to bring a quo warranto action should be denied.

2. A quo warranto action is not appropriate under the facts alleged in the Application.

Under the plain language of Iowa's Constitution and statutes, if the Governor fails to make a judicial appointment within thirty days, the remedy is for the Chief Justice to make the appointment. Iowa Const. art. V, § 15; Iowa Code § 46.15. In this case, Chief Justice Cady declined to do so, indicating through his Counsel that he "respectfully defers to and accepts the decision by Governor Reynolds that this appointment was made on June 21." July 6, 2018 letter from M. Kottmeyer to R. Koopmans. Ex. F. The Chief Justice's respectful deference to the Governor's determination that she made the appointment on time reflects his belief that "respect and comity from within government is as essential to achieving greater public trust and confidence of government, as are the checks and balances built into government." *Id.* The Chief Justice reasonably concluded that the principles of comity, separation of powers, and public trust in government outweigh the impact of a four-day delay in placing a telephone call to the appointee.

The Chief Justice's decision whether to appoint a judge following the thirty-day period is his alone, and this Court should not void the appointment after the Chief Justice has declined to do so. *Cf. State ex rel. Turner v. Scott*, 369 N.W. 828, 833 (Iowa 1978) (affirming dismissal of

quo warranto action seeking to remove a state senator who allegedly failed to establish residency because “[t]he Iowa Constitution leaves to the Senate the determination as to whether a member is qualified[,]” making the issue nonjusticiable). Even if Mr. Dickey were to prevail in this action and succeed in removing Judge Besler from office, this Court could not force the Chief Justice to make the appointment, creating the possibility that the position would be left open indefinitely—precisely the situation the framers of Iowa’s Constitution sought to avoid with the thirty-day requirement.

While there could conceivably be a situation where a quo warranto action would be warranted to remove a judge,¹ the circumstances in this case do not warrant such a drastic remedy. The requirement for the Governor to make each district court appointment within thirty days of receiving a list of candidates from the nominating commission ensures that the governor: (a) fills judicial positions and does not leave them open indefinitely; and (b) appoints judges from the two nominees submitted by the district judicial nominating commission. Iowa Const. art. V, § 15; Iowa Code § 46.15. Neither of these important public policy goals is implicated by the facts alleged in Mr. Dickey’s quo warranto application. The Governor made her selection within the thirty days allowed by the constitution. There are no allegations to suggest that the Governor intentionally delayed the appointment, and it is undisputed that she selected one of the two candidates forwarded by the district nominating commission. Under these facts, disturbing an appointment made by the Governor pursuant to her constitutional authority would violate principles of comity and separation of powers.

¹ Quo warranto actions have been considered on at least two occasions where one judge was selected by the governor to fill a judicial vacancy and a second individual was elected to fill the same vacancy, resulting in two individuals claiming a single judgeship. *State ex rel. Adams v. Murray*, 252 N.W. 556 (Iowa 1934); *State ex rel. Halbach v. Claussen*, 250 N.W. 195 (Iowa 1933).

Removal from office is an extreme remedy, even where there are specific and egregious allegations of wrongdoing on the part of the officeholder. *State v. Watkins*, 914 N.W.2d 827, 839 (Iowa 2018) (construing Iowa Code § 66.1A). When a public official violates the constitution, the remedy is typically not to remove that official from office. The remedy certainly should not be to remove a *different* official from office. A quo warranto action seeking to remove a judge is particularly inappropriate where, as here, there are no allegations of any wrongdoing on the part of the officeholder.

The inappropriateness of quo warranto in this situation is underscored by the history of the writ. At common law, a quo warranto action took the “character of criminal proceedings” and implied wrongdoing on the part of the officeholder. *See State v. Des Moines City Ry. Co. et al.*, 109 N.W. 867, 871 (Iowa 1906) (noting that, at common law, the verdict following trial in a quo warranto action was “guilty” or “not guilty,” and upon a guilty verdict the defendant was liable for ouster and a fine for his wrongful act). While modern quo warranto proceedings are civil in nature, a petitioner must prove that the person holding office is “unlawfully holding or exercising” the office. *Id.* The purpose of the proceeding is “the vindication of public rights and public interests against usurpation.” *Id.* Here, Mr. Dickey has not alleged any facts to support a finding that Judge Besler committed any wrongdoing or is usurping the public interest by serving as a district court judge. Judge Besler lawfully applied to serve as a district court judge in Iowa’s sixth judicial district. Following his appointment, Judge Besler took his oath of office and began hearing cases in good faith.

The public interest would not be served by incentivizing citizens to search for irregularities in the judicial nominating or appointment process with the goal of removing judges from office. Iowa’s constitution and statutes are designed to insulate judges from collateral

attacks to their rulings and from politics. Allowing a quo warranto action to proceed under these circumstances could have the opposite effect.

3. The application for leave to bring a quo warranto action should be denied as a matter of law.

Iowa law does not specify how a judicial appointment is effectuated under Iowa Code 46.15 or the Constitution. A formal opinion of the Iowa Attorney General considering the meaning of “appointment” in Iowa Code § 46.16 concluded that an appointment does not require formal action: “it is our opinion that ‘appointment’ for the purposes of § 46.16 is the act of the governor in designating, choosing or selecting an individual from those nominated to fill a judicial vacancy. This does not mean that upon such appointment the appointee takes or holds office or is entitled to exercise any of the authority thereof.” *The Hon. Robert L. Larson*, 1969 WL 181659, at *4 (Iowa A.G. 1969). The opinion observed, “[t]hus, it would appear that appointment is something more than nomination, yet it is completed with something less than formal investiture in and taking of office.” *Id.* Governor Reynolds’ statement to her Chief of Staff satisfies that standard.

There is also no authority to suggest that an appointment must be in writing in order to be effective. Iowa Code 69.10 requires appointments to be in writing and filed in the secretary of state’s office, but does not require those events to occur on the date the appointment is due. *State ex rel. Halbach v. Claussen*, 250 N.W. 195, 201 (Iowa 1933). In *Claussen*, a quo warranto case in which the court considered which of two presumptive Iowa Supreme Court justices was lawfully in office, the court held that failure to comply with the language in section 69.10 (previously Iowa Code 1154) would not invalidate an appointment: “Noncompliance with section 1154 would be an irregularity only which could be complied with at any time and which would not affect the validity of the commission.” *Id.* at 201 (citing *Marbury v. Madison*, 5 U.S.

137 (1803)). Traditionally, the initial communication from the governor to a judicial appointee has been by telephone, and subsequently memorialized in a letter to the appointee. Therefore, under typical practice, the appointment is verbal, rather than in writing.

Mr. Dickey relies on the Merriam-Webster dictionary definition of “appointment.” But that definition, according to Mr. Dickey’s Application, is the “act of appointing someone or something.” Application ¶ 14. The definition does not state that the appointment must be in writing, or that the nominee must be notified to effectuate the appointment. Mr. Dickey’s argument does not fare better under other dictionary definitions. Black’s Law Dictionary defines “appointment” as “[t]he choice or designation of a person, such as a nonelected public official, for a job or duty; esp., the naming of someone to a nonelected public office.” Black’s Law Dictionary 121 (10th Ed. 2014). The Cambridge Dictionary defines “appointment” as “the act of officially choosing someone for a job, or the job itself.” Cambridge Dictionary (Online Ed. 2018). None of these sources suggest that an appointment must be made in writing, by publication, or by notifying the appointee directly.

The Chief Justice has recognized that there is no standard rule for how appointments must be made. In her letter to Mr. Koopmans, Ms. Kottmeyer stated, “In practice, the chief justice has always considered a judicial appointment was made when it was communicated to the nominee.” She continued, “Nevertheless, this long-standing practice does not mean judicial appointments cannot be made in other ways.” Here, Governor Reynolds confirmed the appointment in a conversation with her Chief of Staff on June 21. Dickey Application ¶ 19; *see also* Ex. D (affidavit of R. Koopmans). This communication was sufficient to effectuate the appointment. The application for leave to bring a quo warranto action should be denied as a matter of law.

4. If the quo warranto action is allowed to proceed, the Court must require the Petitioner to post bond and should consider the case on a stipulated record.

If the Court grants the application for leave to bring a quo warranto action, the Court must require the Petitioner to post a bond. Iowa R. Civ. P. 1.1302(2). In addition, because there are no material facts in dispute and the Court's resolution of the matter would not be aided by an evidentiary hearing, the Court should order that the case proceed on a stipulated factual record. An evidentiary hearing would not inform the Court in this case or serve the public interest.

For the reasons stated above, Respondent respectfully requests that the Court deny Mr. Dickey's application for leave to bring a quo warranto action in the name of the state against Judge Besler. If the application is granted, Respondent requests that the Court require bond to be posted and order that the case proceed on a stipulated factual record.

Respectfully submitted,

THOMAS J. MILLER
IOWA ATTORNEY GENERAL

JEFFREY THOMPSON
SOLICITOR GENERAL

/s/ Emily Willits
EMILY WILLITS
Assistant Attorney General
Department of Justice
Hoover Building, 2nd Floor
1305 E. Walnut
Des Moines, Iowa 50319
Ph: (515) 281-6403
Fax: (515) 281-4209
E-mail: Emily.Willits@iowa.gov
ATTORNEYS FOR THE HON. JASON BESLER

All Parties Served Electronically

Proof of Service	
The undersigned certifies that the foregoing instrument was served upon each of the persons identified as receiving a copy by delivery in the following manner on November 13, 2018.	
<input type="checkbox"/> U.S. Mail	<input type="checkbox"/> FAX
<input type="checkbox"/> Hand Delivery	<input type="checkbox"/> E-mail
<input type="checkbox"/> Federal Express	<input checked="" type="checkbox"/> Electronic Filing
Signature: <u>/s/ V. Naset</u>	

THE IOWA DISTRICT COURT

SIXTH JUDICIAL DISTRICT
LINN COUNTY COURTHOUSE
P.O. Box 1468
Cedar Rapids, Iowa 52406

Chambers of
PATRICK R. GRADY
Chief Judge
patrick.grady@iowacourts.gov

Court Reporter
JULIE NOVAK
julie.novak@iowacourts.gov

NOTICE

TO: All Applicants for District Judge Vacancy

DATE: April 20, 2018

A vacancy exists in the office of District Judge for the Sixth Judicial District due to the retirement of Judge Marsha Bergan.

To be considered by the Commission, **the original completed application must be delivered to the office of the District Court Administrator, Linn County Courthouse, P.O. Box 1468, Cedar Rapids, Iowa, no later than * * 3:00 p.m., Thursday, May 17, 2018 and a copy sent to each Commissioner by that same date and time at the addresses listed.** State prescribed applications may be picked up at the Court Administration Office or a copy of the application may be requested via e-mail from Julie.green@iowacourts.gov.

No application will be accepted after * *Monday, May 17, 2018 at 3:00 p.m., regardless of the reason. **Any application, together with supporting documents and letters of support, must be sent to the Commissioners at the addresses listed.**

Applicants for the position must be members of the Iowa Bar and residents of the Sixth Judicial District. They must also be of an age that will allow them to complete an initial term of office and one regular six-year term of office before reaching age seventy-two. The present salary for the position is \$147,494.00.

The Sixth Judicial District Nominating Commission has set * * * Monday, May 21, 2018, at 8:30 a.m. as the date for a meeting at which applicants for the position will be interviewed by the Commission. Following the interviews, the Commission will, in all probability, proceed by ballot to nominate two of the applicants for the position. The interviews and balloting will take place at the Linn County Courthouse, Third Avenue Bridge, Cedar Rapids, Iowa. The names of the two nominees will then be sent to the Governor, who has 30 days within which to appoint one of the two nominees to fill the vacancy.

Applicants for District Judge Vacancy
April 20, 2018
Page 2 of 3

The person appointed to the position will serve an initial term of office and will stand for retention at the next general election held not less than one year following appointment. If retained in office at that time, the person will serve a regular term of six years and may stand for retention in office every six years thereafter. Retirement of District Judges in Iowa is mandatory at age seventy-two.

There is no requirement for applicants to personally interview with Commissioners, nor is there a requirement for applicants to obtain letters of support. It is up to each individual Commissioner to determine whether or not he or she will schedule personal interviews with applicants; however, the individual policy of a Commissioner in this regard is to be applied consistently to all applicants who request an interview in a timely manner. **Letters in support of or in opposition to an applicant shall be directed to * *Chief Judge Patrick R. Grady (Linn County Courthouse, PO Box 1468, Cedar Rapids, IA 52406), with copies sent directly to each Commissioner by regular mail or e-mail and must be received no later than * * May 17, 2018.**

To facilitate any personal contacts which an applicant may wish to make with a Commissioner, a complete list of the names and addresses of each Commissioner is provided below:

Chair: Patrick R. Grady, District Judge
Linn County Courthouse
PO Box 1468
Cedar Rapids, IA 52406
(319) 398-3920
patrick.grady@iowacourts.gov

Adam Hocker
2718 M. Street
Williamsburg, IA 52361-9766
(319) 560-9766
Adam@future-profits.com

Tom William Yeoman
PO Box 346, 102 Shomont Drive
Monticello, IA 52310
(319) 480-0920
tyeoman@yo-ho.com

Karen Fesler
1524 Forest Road
Coralville, IA 52241
(319) 331-2573
Karenfesler@icloud.com

Steven L. Armstrong
3520 Timber Ridge Trail
Cedar Rapids, IA 52411
319-393-4924
Steve.armstrong@armstrongtransportation.com

Alison Werner-Smith
120 East Washington Street
Iowa City, IA 52240
(319)337-9606
awsmith@hmsblaw.com

Vacancy still to be filled.

Applicants for District Judge Vacancy
April 20, 2018
Page 3 of 3

Darin H. Luneckas
866 1st Ave. NE
Cedar Rapids, IA 52402
319-294-8777
darin@crlawyers.com

Steve Ballard
222 South Linn Street
Iowa City, IA 52244-2447
(319) 338-7551
(319) 430-3350
ballard@lefflaw.com

Caitlin Slessor
420 Sixth Street SE, Suite 160
Cedar Rapids, IA 52401
(319)365-5437
CLS@ShuttleworthLaw.com

Thomas D.S. Farnsworth
103 E. College Street #312
Iowa City, IA 52245
(319)558-7338
tom@keeganlaw.com

JUDGE PATRICK R. GRADY, Chair
Sixth District Judicial Nominating Commission

NOTICE

**IN THE MATTER OF
SIXTH JUDICIAL DISTRICT NOMINATING COMMISSION**

Notice is hereby given that on Monday, May 21, 2018, at 8:30 a.m. in the Linn County Courthouse, Cedar Rapids, Iowa, the above Commission will meet for the purpose of interviewing and nominating two individuals for the position of District Court Judge for the Sixth Judicial District.

Applications are available at the office of the District Court Administrator, Linn County Courthouse, Third Avenue Bridge, Cedar Rapids, Iowa. Applications and any supporting documentation must be completed and returned to the office of the District Court Administrator no later than 3:00 p.m. on May 17, 2018. Individual copies shall be sent to the individual commission members.

Nominees shall be members of the bar of Iowa, shall be residents of the state or district of the court to which they are nominated. The person appointed to the position will serve an initial term of office and will stand for retention at the next general election held not less than one year following appointment. If retained in office at that time, the person will serve a regular term of six years and may stand for retention in office every six years thereafter. Retirement of District Judges in Iowa is mandatory at age seventy-two. The person appointed must be able to serve the initial term and one regular term before reaching age seventy-two.

Dated this 20th day of April, 2018.

FOR THE COMMISSION
Patrick R. Grady, Chief Judge
Sixth Judicial District
Chair, Judicial Nominating Commission

THE IOWA DISTRICT COURT

SIXTH JUDICIAL DISTRICT
LINN COUNTY COURTHOUSE
P.O. Box 1468
Cedar Rapids, Iowa 52406
Patrick.grady@iowacourts.gov

Chambers of
PATRICK R. GRADY
Chief Judge

Court Reporter
Julie Novak

TO: Applicants, Commission Members, News Media

FROM: Judge Patrick Grady
Sixth District Judicial Nominating Commission

RE: Applicants for District Judge Position

DATE: May 17, 2018

The following have submitted their names as applicants to the Judicial Nominating Commission for the position of District Court Judge due to the retirement of the Honorable Marsha Bergan. The Commission will meet on Monday, May 21, 2018, commencing at 8:30 a.m. in the **Fourth Floor Jury Room** in the Linn County Courthouse. At that time, the applicants will be interviewed by the Commission members. Two successful applicants will be selected as nominees by the Commission and their names submitted to Governor Kim Reynolds.

The names and times of interview are as follows:

Mark Tremmel – Cedar Rapids – 9:00 a.m.
David Cox – North Liberty – 9:20 a.m.
Mark Fisher – Cedar Rapids – 9:40 a.m.
Jason Besler – Cedar Rapids – 10:00 a.m.

Break

Justin Lightfoot – Cedar Rapids – 10:20 a.m.
Kristofer Lyons – Anamosa – 10:40 a.m.
Ellen Ramsey-Kacena – Swisher – 11:00 a.m.
Ronald Martin – Alburnett – 11:20

Break

Teresa Baumann – Cedar Rapids – 1:00 p.m.
Brent Heeren – Toledo – 1:20 p.m.
James Kringlen – Solon – 1:40 p.m.
John Bruzek – Iowa City – 2:00 p.m.

Break

Joseph Pavelich – Iowa City – 2:40 p.m.
James Moriarty – Cedar Rapids – 3:00 p.m.
Brandon Schrock – North Liberty – 3:20 p.m.

PRG/pg



Koopmans, Ryan <ryan.koopmans@iowa.gov>

Fwd: 6th Judicial District Candidates

O'Brien, Meaghan <meaghan.obrien@iowa.gov>

Wed, May 23, 2018 at 10:35 AM

To: Colin Smith <colin.smith@iowa.gov>, Ryan Koopmans <ryan.koopmans@iowa.gov>

----- Forwarded message -----

From: <Patrick.Grady@iowacourts.gov>

Date: Tue, May 22, 2018 at 9:55 AM

Subject: 6th Judicial District Candidates

To: meaghan.obrien@iowa.gov

Meaghan:

Please find attached a copy of the certification that is being sent to the Governor via regular mail.

Patrick R. Grady

--

Meaghan O'Brien | Administrative Assistant
Office of the Governor, State of Iowa
Gov. Kim Reynolds & Lt. Governor Adam Gregg
515-725-3517 | meaghan.obrien@iowa.gov
www.governor.iowa.gov
www.ltgovernor.iowa.gov

Scanning2018-05-22-033942.pdf
244K

THE IOWA DISTRICT COURT

SIXTH JUDICIAL DISTRICT
LINN COUNTY COURTHOUSE

P.O. Box 1468
Cedar Rapids, Iowa 52406

Chambers of
PATRICK R. GRADY
Chief District Judge

Court Reporter
Julie Novak

May 21, 2018

The Honorable Kim Reynolds
Governor of the State of Iowa
State Capitol
Des Moines, IA 50319

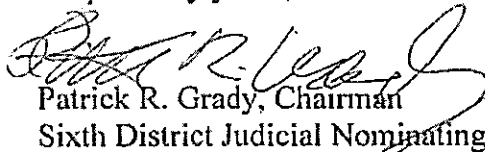
Dear Governor Reynolds:

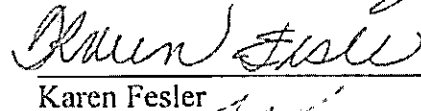
Re: Nominees for District Court Vacancy

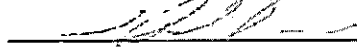
Pursuant to Iowa Code Section 46.14, I hereby certify that the following persons are nominees for the Iowa District Court Judgeship vacancy existing in the Sixth Judicial District of the State of Iowa due to the retirement of Judge Marsha Bergan. They were selected at a meeting of the Sixth District Judicial Nominating Commission held on May 21, 2018, and have also been certified this date to the Honorable Mark S. Cady, Chief Justice of the Supreme Court of Iowa.

Jason Besler, Cedar Rapids
Ellen Ramsey-Kacena, Swisher

Respectfully yours,


Patrick R. Grady, Chairman
Sixth District Judicial Nominating Commission


Karen Fesler

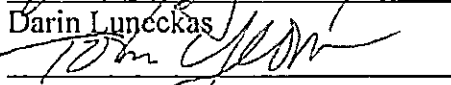

Adam Hocker



Steve Ballard


Thomas Farnsworth

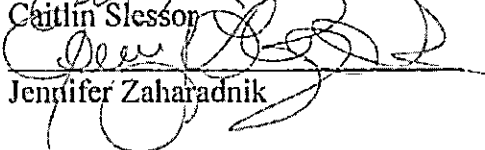

Steven Armstrong


Darin Luncekas


Tom Yeoman


Alison Werner Smith


Caitlin Slessor


Jennifer Zaharadnik



Koopmans, Ryan <ryan.koopmans@iowa.gov>

Fw: 6th District Candidates

Todd.Nuccio@iowacourts.gov <Todd.Nuccio@iowacourts.gov>
To: ryan.koopmans@iowa.gov

Tue, May 22, 2018 at 5:51 PM

Here are the nominees for D6. I sent a request for contact information this morning.

Todd Nuccio | State Court Administrator
Iowa Judicial Branch
1111 East Court Avenue | Des Moines | Iowa 50319
515.348.4880 (phone)
todd.nuccio@iowacourts.gov

----- Forwarded by Todd Nuccio/SCA/JUDICIAL on 05/22/2018 05:51 PM -----

From: Patrick R Grady/District6/JUDICIAL
To: Mark S Cady/District2/JUDICIAL@JUDICIAL
Cc: Todd Nuccio/SCA/JUDICIAL@JUDICIAL
Date: 05/22/2018 10:17 AM
Subject: 6th District Candidates

Please find attached a copy of the notice being sent by regular mail.

Patrick R. Grady



Scanning2018-05-22-191038.pdf
178K

Phone 319-398-3920, ext. 1100

THE IOWA DISTRICT COURT

**SIXTH JUDICIAL DISTRICT
LINN COUNTY COURTHOUSE**

**P.O. Box 1468
Cedar Rapids, Iowa 52406
Patrick.grady@iowacourts.gov**

Chambers of
PATRICK R. GRADY
Chief District Judge

Court Reporter
Julie Novak

May 21, 2018

The Honorable Mark S. Cady
Chief Justice of the Supreme Court of Iowa
1111 East Court Avenue
Des Moines, IA 50319

Dear Chief Justice Cady:

Re: Nominees for District Court Vacancy

Pursuant to Iowa Code Section 46.14, I hereby certify that the following persons are nominees for the Iowa District Court Judgeship vacancy existing in the Sixth Judicial District of the State of Iowa due to the retirement of Judge Marsha Bergan. They were selected at a meeting of the Sixth District Judicial Nominating Commission held on May 21, 2018, and have also been certified this date to the Honorable Kim Reynolds, Governor of the State of Iowa.

**Jason Besler, Cedar Rapids
Ellen Ramsey-Kacena, Swisher**

Respectfully yours,



Patrick R. Grady, Chairman
Sixth District Judicial Nominating Commission

IN THE IOWA DISTRICT COURT FOR JOHNSON COUNTY

STATE ex rel. GARY DICKEY, Petitioner, v. HON. JASON BESLER, Defendant.	Case No. CVCV080344 AFFIDAVIT OF RYAN KOOPMANS
---	--

The undersigned Ryan Koopmans, being duly sworn and under oath, attests to the following:

1. I served as Senior Legal Counsel and Chief Policy Advisor to Governor Kim Reynolds from May 2017 until June 9, 2018, when I began serving as Governor Reynolds's chief of staff.
2. On May 22, 2018, I received an email from State Court Administrator Todd Nuccio, forwarding correspondence from the Chair of the Sixth District Judicial Nominating Commission submitting the names of Jason Besler and Ellen Ramsey-Kacena as nominees to serve as district judge in the Sixth Judicial District. The same day, another employee in our office received similar correspondence directly from the Chair of the Commission that was eventually also forwarded to me.
3. I then assisted the Governor in her consideration of the nominees. And on June 11, 2018, I was present when the Governor interviewed both nominees.
4. On June 21, 2018, I spoke with Governor Reynolds about the Sixth Judicial District vacancy. She confirmed that she had made a final decision: she was appointing Jason Besler.

5. Because of an oversight, I did not provide the Governor with Jason Besler's phone number to inform him of his appointment until June 25, 2018. That morning, the Governor called Jason Besler and I called Ellen Ramsey-Kacena to inform them each of the appointment. Our office also issued a press release announcing the appointment. And the Governor signed a letter to Jason Besler confirming the appointment.
6. Also on the morning of June 25, prior to the Governor calling Jason Besler, I reached out to Molly Kottmeyer, Counsel to the Chief Justice of the Iowa Supreme Court, to explain the circumstances surrounding the appointment and ask whether Chief Justice Cady had any concerns about the appointment. After speaking with Chief Justice Cady, Ms. Kottmeyer informed me that Chief Justice Cady neither blessed nor objected to the appointment at that time.
7. Over the the next two weeks, I remained in communication with Ms. Kottmeyer by phone and email. And on July 6, 2018, Ms. Kottmeyer sent me a signed letter, informing me that Chief Justice Cady "respectfully defers to and accepts the decision by Governor Reynolds that this appointment [of Judge Besler] was made on June 21."

STATE OF IOWA)

County of Polk)

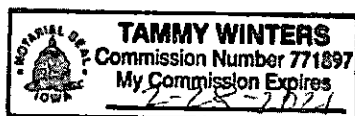


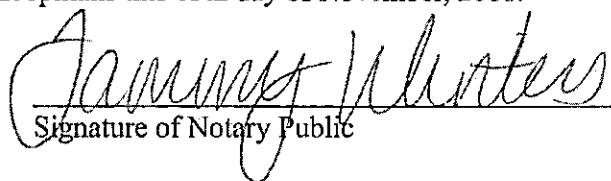
Ryan Koopmans

11/13/18

Date

Sworn to and subscribed before me by Ryan Koopmans this 13th day of November, 2018.





Signature of Notary Public

OATH OF OFFICE

OF

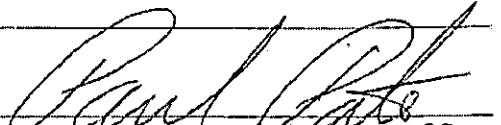
Mr. Jason Besler
2447 5th Avenue SE
Cedar Rapids, IA 52403

Term beginning June 21, 2018

Term ending December 31, 2020

Filed in office of

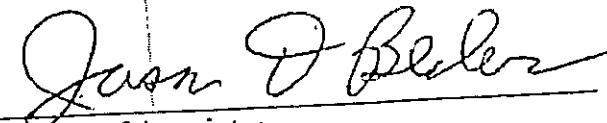
SECRETARY OF STATE


Secretary of State


By _____
Deputy

STATE OF IOWA
County of Linn

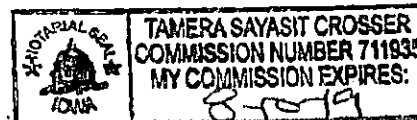
I, Jason Besler, as District Court Judge in District 6, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Iowa, and that, without fear, favor, affection, or hope of reward, I will, to the best of my knowledge and ability, administer justice according to the law, equally to the rich and the poor.


Signature of Appointee

Sworn to and subscribed before me by the said Jason Besler this 28th
day of June A.D. 2018.
WITNESS my hand and official seal at Linn County Courthouse the day
and date last above written.


Signature of Notary
Secretary
Title

RECEIVED
IOWA SECRETARY OF STATE
PAUL D. PATE
18 JUL -2 PM 4:26





Supreme Court of Iowa

IOWA JUDICIAL BUILDING
1111 E. COURT AVENUE
DES MOINES, IA 50319
TEL: (515) 348-4965

July 6, 2018

Ryan Koopmans
Chief of Staff
Office of the Governor
State Capitol
Des Moines, IA 50319

Dear Ryan:

The chief justice asked me to write to you regarding the appointment process for the most recent district judge position in the 6th judicial district. I hope I do not sound too formal, but I think it is important to speak in a way that captures the true thoughts and feelings of the chief justice about the essential need for trust in government and its application to this matter.

Those authorized to act in government must often also decide what is required to be done to carry out their responsibilities. This is true in making a judicial appointment under the Constitution. It means it is up to the governor to give meaning to the constitutional directive for judicial appointments to be made within thirty days. This decision is not unlike many decisions that must be made throughout government each day to carry out the responsibilities within each branch of government. Indeed, it is a critical part of our democratic process and the reason public officials take an oath to support the Constitution and the law. The chief justice understands and appreciates the responsibility of the Governor and other public officials to make such decisions, and views that authority and discretion with the greatest deference and respect. He believes respect and comity from within government is as essential to achieving greater public trust and confidence of government, as are the checks and balances built into government.

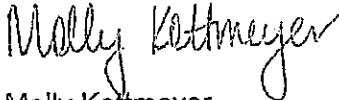
In practice, the chief justice has always considered a judicial appointment was made when it was communicated to the nominee. This communication from the governor to the nominee is a time-honored practice that every judge in this state has experienced, and an honor no judge has ever forgotten. To my knowledge, it is a practice that has always occurred within

Page 2
Ryan Koopmans
July 6, 2018

thirty days of the nomination by the judicial nominating commission. Nevertheless, this long-standing practice does not mean judicial appointments cannot be made in other ways.

With the recent district judge appointment in the 6th judicial district, the Governor's Office communicated to the chief justice, the secretary of state, and the public that the appointment of Jason Besler as district court judge was made on Thursday, June 21, 2018, which was day thirty following the nomination. You have further communicated that Governor Reynolds made "the verbal appointment" on that date, but did not notify Besler or issue a public statement on the appointment until Monday, June 25, 2018. Although the appointment was not communicated to Besler or made public until Monday, June 25, Governor Reynolds determined that the appointment was made on June 21 when she made the decision to select Besler. Consequently, the chief justice respectfully defers to and accepts the decision by Governor Reynolds that this appointment was made on June 21.

Very truly yours,

A handwritten signature in cursive script that reads "Molly Kottmeyer".

Molly Kottmeyer
Counsel to the Chief Justice